



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

2/21/2023

Subject:

Public Hearing, Re: Ordinance Amending Chapter 62, Article VI, Division 2, Section 62-1157, "Submission of a Binding Development Plan in Support of Request for Change of Zoning or Conditional Use Permit"

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing and adopt the proposed ordinance amending Chapter 62, Article VI, Division 2, Section 62-1157, "Submission of a Binding Development Plan in support of request for change of zoning or conditional Use Permit".

Summary Explanation and Background:

On August 30, 2022, the Board of County Commissioners approved legislative intent and permission to advertise Amendments to Section 62-1157, Brevard County Code of Ordinances, to effectuate the following changes:

1. Requiring that an application for a Binding Development Plan (BDP) identify all legal and equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s);
2. Requiring that all legal or equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s) be a party to the BDP prior to the final approval by the Board of County Commissioners; and
3. Clarifying when the 120-day period to record a BDP begins.

The attached ordinance has been drafted to meet this direction.

These amendments are being requested for several reasons. First, requiring the owners of and interest-holders in the subject property be identified in the application and, ultimately, joined in the BDP is necessary to ensure such individuals/entities are bound by the BDP's terms and conditions. The requirement of being a party to the BDP could be met by being a signatory to the BDP itself or a signatory to a legal instrument such as a joinder that would bind the interest-holder to the BDP.

Additionally, while Section 62-1157(1)(g) states, in pertinent part, that “a certified copy of the recorded document shall be supplied to the zoning division within 120 days of approval by the board of county commissioners,” the Ordinance does not specify that the “approval” being referred to is the approval of the associated rezoning application at the public hearing stage or, where there is no associated rezoning application, when the Board approves an application to amend a BDP or otherwise makes an initial approval of a BDP application. Staff has consistently interpreted this subsection to have this meaning, but clarifying this potential ambiguity would assist in ensuring these agreements are executed and recorded in a timely manner. This is important because the official zoning maps that the public and many entities rely on for information reflecting zoning-related matters will not reflect the Board’s decision regarding an approval subject to the execution of a BDP until such recordation occurs.

On December 14, 2022, the Building Construction Advisory Committee heard the request and unanimously recommended approval.

On January 9th, 2023, the Planning and Zoning Board/Local Planning Agency heard the request and voted to recommend approval 8-1, with a request to include “clarification on the extension” of the 120-day period to record a BDP. The attached proposed ordinance implements this request by adding a procedure to allow an applicant to request a 60-day extension from the Board. It should be noted that within the past 3 years, only 1 BDP was withdrawn due to lack of recordation within the 120-day time period.

Clerk to the Board Instructions:

Once ordinance is filed with the State, please return two copies to Planning & Development.



February 22, 2023

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

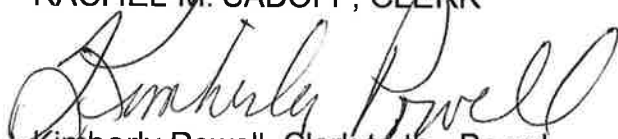
RE: Item H.1., Ordinance Amending Chapter 62, Article VI, Division 2, Section 62-1157, Submission of a Binding Development Plan (BDP) in Support of Request for Change of Zoning of Conditional Use Permit

The Board of County Commissioners, in regular session on February 21, 2023, continued consideration amending ordinance Chapter 62, Article VI, Division 2 Section 62-1157, submission of a BDP in support of request for change of zoning of Conditional Use Permit to March 7, 2023, meeting.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/ns

ORDINANCE NO. 2023-_____

AN ORDINANCE AMENDING CHAPTER 62 ARTICLE VI, DIVISION 2, SECTION 62-1157, "SUBMISSION OF BINDING DEVELOPMENT PLAN IN SUPPORT OF REQUEST FOR CHANGE OF ZONING OR CONDITIONAL USE PERMIT" TO CLARIFY THAT BINDING DEVELOPMENT PLANS ARE EXCLUSIVE AND SEPARATE FROM DEVELOPMENT AGREEMENTS GOVERNED BY CHAPTER 163, PART II, FLORIDA STATUTES; REQUIRING THAT ALL THOSE WITH AN INTEREST IN THE SUBJECT PROPERTY BE IDENTIFIED; REQUIRING THAT THOSE WITH AN INTEREST IN THE SUBJECT PROPERTY BE MADE A PARTY TO AND CONSENT TO THE BINDING DEVELOPMENT PLAN PRIOR TO APPROVAL BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS; CLARIFYING PROCEDURES AND TIME PERIOD TO SUPPLY RECORDED BINDING DEVELOPMENT PLAN TO BREVARD COUNTY, INCLUDING AUTHORIZING THE BOARD TO GRANT CERTAIN TIME EXTENSIONS FOR RECORDING BINDING DEVELOPMENT PLANS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board has determined that Binding Development Plans ("BDPs") will serve the public health, safety, and welfare by ensuring development is done correctly and in accordance with the County's Comprehensive Plan and Land Development Regulations exclusive of the requirements outlined in Chapter 163, Part II, Florida Statutes, known as the Florida Local Government Development Agreement Act, as may be amended; and

WHEREAS, it is necessary and proper to require all those with a legal and equitable interest in property being made subject to a BDP be a party to the agreement to ensure that the terms of the agreement will continue to run with the land regardless of its disposition, including in the event of foreclosure; and

WHEREAS, it is in the best interest of the public to clarify when the specified time period to supply a recorded BDP to the County begins to run so that the interest of the applicant in having a reasonable time to complete the process is afforded while also protecting the interests of the public in having an accurate and up-to-date zoning map indicating that property has been made subject to the terms of a BDP.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Underline indicates additions.

~~Strike-through indicates deletions.~~

SECTION 1. Chapter 62 Article VI, Division 2, Section 62-1157, "Submission of binding development plan in support of request for change of zoning or conditional use permit," Code of Ordinances of Brevard County, Florida, is hereby amended as follows:

An applicant for a change of zoning or a conditional use permit may voluntarily submit a binding development plan in support of such change of zoning or conditional use permit, exclusive and separate from development agreements governed by Chapter 163, Part II, Florida Statutes, as may be amended.

- (1) Basic requirements for a binding development plan are as follows:
 - a. The plan shall provide a legal description of the land subject to the restriction.
 - b. The application shall identify all legal and equitable owners of the subject property, as well as any entity with an interest in the property.
 - b.c. Where a concurrency issue is addressed by the binding development plan, the plan shall specify a time certain for performance by the property owner.
 - e.d. The plan shall provide a written description of the particular conditions, restrictions, or requirements placed on the property prior to development.
 - d.e. The binding development plan shall also include a conceptual graphic representation, when applicable, of the proposed development, depicting all restrictions stipulated in subsection (1)~~ed~~ of this section.
 - e.f. Where a binding development plan is submitted, approval of the zoning action shall be contingent upon the presentation of a final and complete binding development plan and acceptance of the plan by the board of county commissioners.
 - f.g. If appropriate, the document should state the level of development permitted. The document shall specify that no further development shall be permitted without a waiver or release of the restrictions by the county. Any restriction stipulated in the binding development plan shall not be less restrictive than requirements of existing codes and regulations.
 - h. All persons or entities with a legal or equitable interest in the subject property shall be a party to the binding development plan, as well as any entity with an interest in the property including, but not limited to, any lienor(s). This requirement may be satisfied by either being a signatory to the binding development plan or through an instrument that binds all such owners and interest-holders to the agreement. All legal and equitable owners of the subject property, as well as any entity with an interest in the property, must consent to the binding development plan prior to its approval by the Board of County Commissioners.

g.i. (1) The document shall be recorded ~~by the applicant~~ in the public records of the county, and a certified copy of the recorded document shall be supplied to the zoning division within 120 (one hundred twenty) days of approval by the board of county commissioners at the public hearing held pursuant to section 62-1151(d) or, where there is no associated rezoning application, at the public hearing held in accordance with Section 62-1157(2). Approval of the zoning action is not effective until such criteria are satisfied. Unless an extension is approved pursuant to Section 62-1157(1)(i)(2), if the applicant fails to record the binding development plan prior to the expiration of 120 (one hundred twenty) days from the date of approval by the board of county commissioners, then the application will be considered to have been withdrawn.

(2) The applicant may make a request of a 60 (sixty) day extension for good cause to the Board of County Commissioners. Such a request must be made within 90 (ninety) days of approval by the Board of County Commissioners at the public hearing held pursuant to section 62-1151(d) or, where there is no associated rezoning application, at the public hearing held in accordance with section 62-1157(2). Upon receiving such a request, staff will present the extension request to the Board of County Commissioners for approval prior to the expiration of 120 (one hundred twenty) days. In no event shall an extension exceed 60 (sixty) days. If the applicant fails to record the binding development plan prior to the expiration of the extension, then the application will be considered to have been withdrawn.

- (2) Before entering into, amending or revoking a binding development plan, or amending, revoking or removing an existing binding site plan where rezoning is not also under consideration, two public hearings shall be held. The first public hearing shall be held by the local planning agency, and the second public hearing shall be held by the board of county commissioners. The notice requirements for rezoning of property contained in section 62-1151 shall apply. However, the notice shall describe generally the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed amendment to the official zoning map which is referenced in section 62-1151.
- (3) The public hearings described in subsection (2) of this section shall be conducted and the item considered as required in section 62-1151 and the 1988 county comprehensive plan, as amended. However, the review shall be of the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed zoning classification referenced in section 62-1151.
- (4) Existing binding site plans shall be treated as binding development plans insofar as they are consistent with the 1988 county comprehensive plan, as amended, and more restrictive ordinances of the county, and the plans shall

continue to be binding on the applicant and his assigns, heirs and successors in title or possession of the lot, tract or parcel of land. However, at the time such binding site plans are amended, the plan shall be converted to the form of the binding development plans required under this section.

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

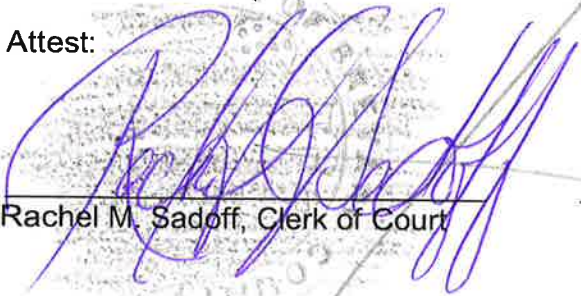
SECTION 4. Area Encompassed. This Ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this Ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This Ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in Code. It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

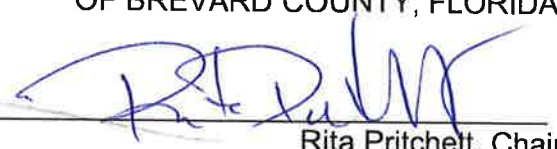
DONE, ORDERED, AND ADOPTED, in regular session, this 21st Day of February, 2023.

Attest:


Rachel M. Sadoff, Clerk of Court

(S E A L)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair
(as approved by the Board on February
21, 2023)

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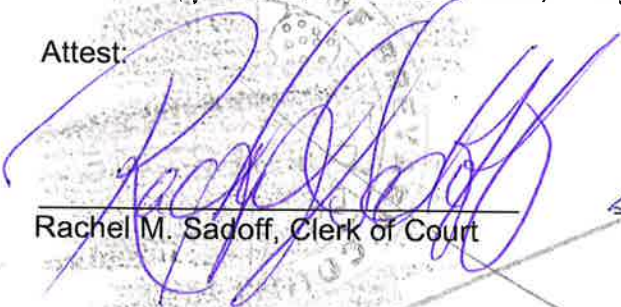
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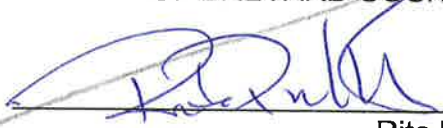
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BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair
(as approved by the Board on February
21, 2023)

Chapter 62 Article VI, Division 2, Section 62-1157, "Submission of binding development plan in support of request for change of zoning or conditional use permit"

An applicant for a change of zoning or a conditional use permit may voluntarily submit a binding development plan in support of such change of zoning or conditional use permit, exclusive and separate from development agreements governed by Chapter 163, Part II, Florida Statutes, as may be amended.

(1) Basic requirements for a binding development plan are as follows:

- a. The plan shall provide a legal description of the land subject to the restriction.
- b. The application shall identify all legal and equitable owners of the subject property, as well as any entity with an interest in the property.
- c. Where a concurrency issue is addressed by the binding development plan, the plan shall specify a time certain for performance by the property owner.
- d. The plan shall provide a written description of the particular conditions, restrictions, or requirements placed on the property prior to development.
- e. The binding development plan shall also include a conceptual graphic representation, when applicable, of the proposed development, depicting all restrictions stipulated in subsection (1)d of this section.
- f. Where a binding development plan is submitted, approval of the zoning action shall be contingent upon the presentation of a final and complete binding development plan and acceptance of the plan by the board of county commissioners.
- g. If appropriate, the document should state the level of development permitted. The document shall specify that no further development shall be permitted without a waiver or release of the restrictions by the county. Any restriction stipulated in the binding development plan shall not be less restrictive than requirements of existing codes and regulations.
- h. All persons or entities with a legal or equitable interest in the subject property shall be a party to the binding development plan, as well as any entity with an interest in the property including, but not limited to, any lienor(s). This requirement may be satisfied by either being a signatory to the binding development plan or through an instrument that binds all such owners and interest-holders to the agreement. All legal and equitable owners of the subject property, as well as any entity with an interest in the property, must consent to the binding development plan prior to its approval by the Board of County Commissioners.
- i. (1) The document shall be recorded in the public records of the county, and a certified copy of the recorded document shall be supplied to the zoning division within 120 (one hundred twenty) days of approval by the board of county commissioners at the public hearing held pursuant to

section 62-1151(d) or, where there is no associated rezoning application, at the public hearing held in accordance with Section 62-1157(2). Approval of the zoning action is not effective until such criteria are satisfied. Unless an extension is approved pursuant to Section 62-1157(1)(i)(2), if the applicant fails to record the binding development plan prior to the expiration of 120 (one hundred twenty) days from the date of approval by the board of county commissioners, then the application will be considered to have been withdrawn.

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- (2) Before entering into, amending or revoking a binding development plan, or amending, revoking or removing an existing binding site plan where rezoning is not also under consideration, two public hearings shall be held. The first public hearing shall be held by the local planning agency, and the second public hearing shall be held by the board of county commissioners. The notice requirements for rezoning of property contained in section 62-1151 shall apply. However, the notice shall describe generally the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed amendment to the official zoning map which is referenced in section 62-1151.
- (3) The public hearings described in subsection (2) of this section shall be conducted and the item considered as required in section 62-1151 and the 1988 county comprehensive plan, as amended. However, the review shall be of the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed zoning classification referenced in section 62-1151.
- (4) Existing binding site plans shall be treated as binding development plans insofar as they are consistent with the 1988 county comprehensive plan, as amended, and more restrictive ordinances of the county, and the plans shall continue to be binding on the applicant and his assigns, heirs and successors in title or possession of the lot, tract or parcel of land. However, at the time such binding site plans are amended, the plan shall be converted to the form of the binding development plans required under this section.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 31, 2022

MEMORANDUM

TO: Tad Calkins, Planning and Development

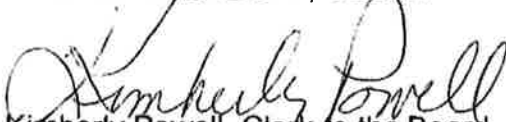
RE: Item F.5., Legislative Intent and Permission to Advertise Amendments to Sec. 62-1157, Brevard County Code of Ordinances, for Binding Development Plan (BDP) Requirements

The Board of County Commissioners, in regular session on August 30, 2022, granted legislative intent and permission to advertise to amend Sec. 62-1157, Brevard County Code of Ordinances, to require that an application for a BDP identify all legal and equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s); require that all legal or equitable owners of the property, and any entity with an interest in the property, including, but not limited to, any lienor(s) be a party to the BDP prior to final approval by the Board of County Commissioners; and clarified when the 120-day period to record a BDP begins.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sm

cc: Budget
Finance

From: [Kim Rezanka](#)
To: [Jones, Jennifer](#); [Calkins, Tad](#); [Ball, Jeffrey](#)
Subject: 1.9.23 P & Z Public Comment; Sec. 62-1157
Date: Wednesday, December 14, 2022 2:13:24 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Please include this as public comment for Jan. 9th P & Z hearing.

As to the proposed changes, what does (1)(b) and (h) require? What does “legal or equitable interest” mean?

Is that any lien or judgment recorded against the property owner(s)? What if the lien or judgment is invalid or disputed in a lawsuit, or unknown? Does the property owner have to order a title search before seeking a BDP? This should be ONLY a Mortgagee, and only if it has the ability to foreclose on a mortgage against the property.

Also, does (1)(h) mean that every owner has to sign the BDP (sometimes only one – husband or wife – has to sign, not both)?

Sec. (1) (i) needs to include: “The 120 days may be extended by the County Manager or the County Manager’s designee upon good cause shown, such as inability to obtain the mortgagee’s consent or joinder. The denial of an extension may be appealed to the County Commission within 30 days of denial.”

Sincerely,
Kim Rezanka

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